

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK**

ZACHARY ADAMSON

Plaintiff,

vs.

**CITY OF BUFFALO, CITY OF BUFFALO POLICE
DEPARTMENT, JOSEPH COOK, MICHAEL KEANE
and SHARON ACKER**

Defendants.

**NOTICE OF REMOVAL
CIVIL ACTION NO.**

11-CV-

Pursuant to 28 U.S.C.A. §1331, 1441 and 1446, Defendants **CITY OF BUFFALO, CITY OF BUFFALO POLICE DEPARTMENT, JOSEPH COOK, MICHAEL KEANE and SHARON ACKER**, by the undersigned attorney hereby removes this action to the United States District Court for the Western District of New York. Removal is proper and this Notice of Removal is submitted by the undersigned attorney for the following reasons:

1. This action is pending in the Supreme Court, of the State of New York, County of Erie, and captioned: **ZACHARY ADAMSON vs. CITY OF BUFFALO, CITY OF BUFFALO POLICE DEPARTMENT, JOSEPH COOK, MICHAEL KEANE and SHARON ACKER** and was filed with the **Index No. 2011002568**. Defendant was noticed of this action by the service of a Summons and Complaint on or about **July 6, 2011**.
2. Based upon the venue where this action was commenced in the state court, the United States District Court of the Western District of New York would be the proper venue for removal of this action.
3. Copies of all pleadings in this matter that have been served to date, to wit the Summons and Complaint, are attached hereto (Exhibit A). The defendant has not served an Answer in this matter.
4. This Court has jurisdiction over this action pursuant to 28 U.S.C.A. §1331.
5. The plaintiffs have alleged violations of federal civil rights pursuant to the provisions of 42 U.S.C.A. §1983.

6. The defendants intends to comply with the provisions of 28 U.S.C.A. §1446(d) with regard to service of this notice upon all parties and with regard to filing of this Notice with the Court of originality.

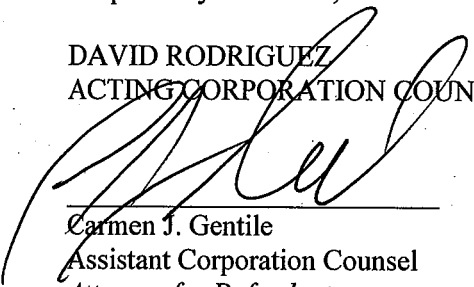
7. Attached is an Index referencing the Summons and Complaint as the only documents known to have been filed in this matter to date. (Exhibit B)

WHEREFORE, notice is hereby given that this action is removed from the New York State Supreme Court, County of Erie to the United States District Court for the Western District of New York.

DATED: Buffalo, New York
August 5, 2011

Respectfully submitted,

DAVID RODRIGUEZ
ACTING CORPORATION COUNSEL



Carmen J. Gentile
Assistant Corporation Counsel
Attorney for Defendants
1132 City Hall : 65 Niagara Square
Buffalo, New York 14202
Tel.: (716) 851-4332
Fax: (716) 851-4105
E-mail: cgentile@city-buffalo.com

TO: Clerk of United States District Court
for the Western District of New York

Clerk of the Supreme Court of the State of
New York, Erie County

Joseph C. Todoro, Esq.
Spadafora & Verrastro, LLP
Attorney for Plaintiffs
2 Symphony Circle
Buffalo, New York 14201
Tel.: (716) 854-1111



CITY OF BUFFALO
DEPARTMENT OF LAW

EXHIBIT

A

STATE OF NEW YORK
SUPREME COURT : COUNTY OF ERIE

ZACHARY ADAMSON
83 Delham Street
Buffalo, New York 14209,

Plaintiff,

- vs -

CITY OF BUFFALO
1100 City Hall
Buffalo, New York 14202
CITY OF BUFFALO POLICE DEPARTMENT
74 Franklin Street
Buffalo, New York 14202,
JOSEPH COOK,
74 Franklin Street
Buffalo, New York 14202,
MICHAEL KEANE,
74 Franklin Street
Buffalo, New York 14202, and
SHARON ACKER,
74 Franklin Street
Buffalo, New York 14202,

Defendants.

SUMMONS

**IMMEDIATELY TURN THESE
PAPERS OVER TO YOUR
INSURANCE REPRESENTATIVE.
YOUR FAILURE TO DO THIS
MAY SUBJECT YOU TO PERSONAL
FINANCIAL RESPONSIBILITY IN
THIS MATTER.**

Index No.: 2011 - 2568
Date Filed: 6/27/11

FILED
08/27/2011/ 15:51:52
ERIE COUNTY CLERK
RCPT # 11093537
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RECEIVED B.P.D.
2011 JL - 6 AM 11:33
POLICE COMMISSIONER

TO THE ABOVE NAMED DEFENDANTS:

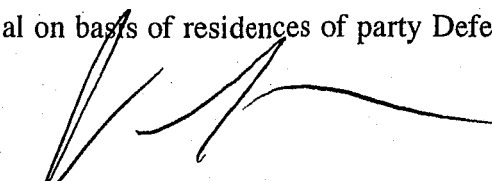
YOU ARE HEREBY SUMMONED to Answer the Complaint in this action, and to serve a copy of your Answer, or, if the Summons is not served with a Complaint, to serve a Notice of Appearance, on the Plaintiff's attorneys within 20 days after the service of this Summons, exclusive of the day of service, or within 30 days after completion of service where service is made in any other manner than by personal delivery within the State. In case of your failure to appear or Answer, Judgment will be taken against you by default for the relief demanded in the Complaint.

COMPLAINT ENDORSEMENT: That Plaintiff's Complaint against you is in the amount of see **WHEREFORE** clauses of Plaintiff's Complaint, together with the costs of this action based on a cause of action for negligence and others.

SCANNED

Erie County is designated as the place of trial on basis of residences of party Defendants whom reside in Erie County, New York.

DATED: June 24, 2011.
Buffalo, New York



Joseph C. Todoro, Esq.
SPADAFORA & VERRASTRO, LLP
Attorneys for Plaintiff
2 Symphony Circle
Buffalo, New York 14201
716-854-1111

STATE OF NEW YORK
SUPREME COURT : COUNTY OF ERIE

ZACHARY ADAMSON,

Plaintiff,

- VS -

COMPLAINT

CITY OF BUFFALO,
CITY OF BUFFALO POLICE DEPARTMENT,
JOSEPH COOK,
MICHAEL KEANE, and
SHARON ACKER,

Defendants.

FILED
ACTIONS & PROCEEDINGS

JUN 27 2011

ERIE COUNTY
CLERK'S OFFICE

The Plaintiff, by his Attorneys, SPADAFORA & VERRASTRO, LLP, for his Complaint against the Defendants, above-named, alleges as follows:

1. This action falls within one or more of the exceptions set forth in CPLR §1602.
2. At all times hereinafter mentioned Plaintiff was a resident of the County of Erie and State of New York.
3. Presently and at all times hereinafter mentioned, Defendant, JOSEPH COOK, was and still is a Police Officer for Defendant CITY OF BUFFALO and Defendant CITY OF BUFFALO POLICE DEPARTMENT.
4. Presently and at all times hereinafter mentioned, Defendant, MICHAEL KEANE, was and still is a Police Officer for Defendant CITY OF BUFFALO and Defendant CITY OF BUFFALO POLICE DEPARTMENT.

5. Presently and at all times hereinafter mentioned, Defendant, SHARON ACKER, was and still is a Police Officer for Defendant CITY OF BUFFALO and Defendant CITY OF BUFFALO POLICE DEPARTMENT.

6. Presently and at all times hereinafter mentioned, Defendant CITY OF BUFFALO was a municipal corporation, incorporated under the Laws of the State of New York.

7. Presently and at all times hereinafter mentioned, Defendant CITY OF BUFFALO POLCE DEPARTMENT was the Police Department for Defendant CITY OF BUFFALO.

8. That a Notice of Claim in writing was duly served upon the Defendants within the time prescribed by Section 50-e of the General Municipal Law of the State of New York, sworn to by or on behalf of the Plaintiff, which set forth the name and post office address of the Plaintiff, and of her Attorneys; the nature of such claim, the time when, the place where and the manner in which the claim arose, and the items of damage or injuries claimed to have been sustained as far as then practicable, and that more than thirty (30) days have elapsed since the service of such Notice, and adjustment or payment thereof has been neglected or refused by the Defendants, and this action was commenced on the claim within one (1) year and ninety (90) days after the happening of the event upon which said claim was based on injuries/damages sustained by Plaintiff.

9. Presently and at all times hereinafter mentioned, Police Officers, JOSEPH COOK, MICHAEL KEANE and SHARON ACKER, were acting within the scope of their employment and their acts were done in furtherance of the interests of the CITY OF BUFFALO, its agents, servants and/or employees, and the CITY OF BUFFALO POLICE DEPARTMENT, its agents, servants and/or employees.

10. That on or about April 1, 2010, Police Officers JOSEPH COOK, MICHAEL KEANE and/or SHARON ACKER did stop Plaintiff, ZACHARY ADAMSON, as he was lawfully on the premises known as 585 Elmwood Avenue located in the City of Buffalo, County of Erie and State of New York, without a warrant, reasonable cause or reasonable suspicion that Plaintiff was engaged in unlawful activity and/or had committed a crime, and did falsely, unlawfully, wantonly, maliciously, recklessly and/or wrongfully, with force and without Plaintiff's consent and against his will, arrested Plaintiff by forcibly placing him in custody and depriving him of his liberty.

11. That said arrest was made without warrant or other legal process and was unlawful in that Plaintiff, ZACHARY ADAMSON, had not committed any crime or offense under the Penal Laws of the State of New York, nor was there reasonable cause and/or reasonable suspicion to believe Plaintiff had committed any crime or offense.

12. By reason of the above, Plaintiff has suffered great emotional trauma and harm, mental injury, physical injury, economical damage, has incurred legal expenses, has been deprived of his physical liberty, and has been deprived of his rights guaranteed under the United States Constitution, the New York Constitution, and the laws of the State of New York, and claims compensatory and/or punitive damages in a sum of money exceeding the jurisdictional limits of all lower courts.

AS AND FOR A SECOND CAUSE OF ACTION:

13. That the Plaintiff, ZACHARY ADAMSON, repeats, re-alleges and re-iterates each and every allegation set forth in paragraphs numbered "1" through "12" herein, with the same force and effect as if stated at length herein.

14. That on or about April 1, 2010, as the Plaintiff was lawfully on the premises known as 585 Elmwood Avenue located in the City of Buffalo, County of Erie and State of New York, Defendants, their agents, servants and/or employees, with deliberation and malice, and without probable cause, detained and falsely arrested Plaintiff for Obstructing Governmental Administration 2nd degree and two counts of Disorderly Conduct.

15. Thereafter, Defendants, their agents, servants and/or employees, falsely and maliciously and without probable cause and provocation, charged Plaintiff with the offenses of Obstructing Governmental Administration 2nd degree and two counts of Disorderly Conduct.

16. Thereafter, following a motion, hearing and/or trial before the City Court of Buffalo, the aforementioned charges, Obstructing Governmental Administration 2nd degree and two counts of Disorderly Conduct, were dismissed and/or Plaintiff was acquitted of same.

17. By reason of the above, Plaintiff has suffered great emotional trauma and harm and mental injury, physical injury, economical damage, has incurred legal expenses, has been deprived of his physical liberty and has been deprived of his rights guaranteed under the United States Constitution, the New York Constitution, and the laws of the State of New York, and claims compensatory and/or punitive damages in a sum of money exceeding the jurisdictional limits of all lower courts.

AS AND FOR A THIRD CAUSE OF ACTION:

18. That the Plaintiff, ZACHARY ADAMSON, repeats, re-alleges and reiterates each and every allegation set forth in paragraphs numbered "1" through "17" herein, with the same force and effect as if stated at length herein.

19. That on or about April 1, 2010, Defendants, JOSEPH COOK, MICHAEL KEANE and/or SHARON ACKER, without any just cause or provocation, negligently, recklessly, maliciously and/or wantonly, with the use of physical force grabbed, jerked, pulled and twisted Plaintiff's person, forced his arms behind his back, slammed him face first against the outside of a vehicle, handcuffed him, forced him into the backseat of a vehicle with his foot and/or leg sticking out and slammed the vehicle's door on Plaintiff's leg and/or foot, all causing Plaintiff serious personal injuries as hereinafter alleged.

20. That by reason of the aforementioned, Plaintiff sustained severe bodily injuries with accompanying pain, including but not limited to multiple lacerations and contusions about his hands, wrists, body and foot as well as injury to his neurological system, neck, back and shoulders, was rendered sick, sore, lame and disabled and was caused to suffer and still suffers great physical pain and mental anguish.

21. By reason of the above, Plaintiff suffered and continues to suffer from said physical injuries, which are permanent in nature, has incurred medical expenses, will incur further medical expenses, has incurred lost wages and impairment of his earning capacity, has suffered great emotional trauma and harm and mental injury, and has been deprived of his rights guaranteed under the United States Constitution, the New York Constitution, and the laws of the State of New York, and claims compensatory and/or punitive damages in a sum of money exceeding the jurisdictional limits of all lower courts.

AS AND FOR A FOURTH CAUSE OF ACTION:

22. That the Plaintiff, ZACHARY ADAMSON, repeats, re-alleges and reiterates each and every allegation set forth in paragraphs numbered "1" through "21" herein, with the same force and effect as if stated at length herein.

23. Defendants, CITY OF BUFFALO and CITY OF BUFFALO POLICE DEPARTMENT, their agents, servants and/or employees, were careless, reckless and/or negligent in failing to afford Police Officers JOSEPH COOK, MICHAEL KEANE and SHARON ACKER the proper and special training necessary for the duties they could reasonably be expected to perform in the course of their employment.

24. By reason of the above, Plaintiff suffered and continues to suffer from said physical injuries, which are permanent in nature, has suffered great emotional trauma and harm and mental injury, has incurred legal expenses, has been deprived of his physical liberty, has incurred lost wages and impairment of his earning capacity, has incurred medical expenses, will incur future medical expenses, and has been deprived of his rights guaranteed under the United States Constitution, the New York Constitution, and the laws of the State of New York, all to his damage in a sum of money exceeding the jurisdictional limits of all lower courts.

AS AND FOR A FIFTH CAUSE OF ACTION:

25. That the Plaintiff, ZACHARY ADAMSON, repeats, re-alleges and reiterates each and every allegation set forth in paragraphs numbered "1" through "24" herein, with the same force and effect as if stated at length herein.

26. Plaintiff, ZACHARY ADAMSON, complaining of Defendants, alleges that Defendants violated certain rights guaranteed under the United States Constitution and New York Constitution by, wrongfully and without probable cause, arresting Plaintiff.

27. Plaintiff, ZACHARY ADAMSON, complaining of Defendants, alleges that Defendants violated certain rights guaranteed under the United States Constitution and New York Constitution by maliciously prosecuting him.

28. Plaintiff, ZACHARY ADAMSON, complaining of Defendants, alleges that Defendants violated certain rights guaranteed under the United States Constitution and New York Constitution by using an unreasonable and excessive amount of force in arresting Plaintiff.

29. Defendants are liable because of their policy and custom of encouraging, tolerating, permitting and/or ratifying a pattern of illegal arrests, imprisonment, malicious prosecution, assault and/or use of excessive force which was known to them or which should have been known to them.

30. Defendants, individually and/or collectively, encouraged, tolerated, permitted and ratified a pattern of illegal arrests, imprisonment, malicious prosecution, assault and/or use of excessive force which was known to them or which should have been known to them.

31. This action is brought pursuant to 42 U.S.C. Sections 1983, and the Fourth, Fifth, Eighth and Fourteenth Amendments to the United States Constitution.

32. Plaintiff, ZACHARY ADAMSON is and was at all times relevant herein, a citizen of the United States and a resident of Buffalo, New York.

33. At all times herein mentioned, Police Officers JOSEPH COOK, MICHAEL KEANE and SHARON ACKER, were acting under color of law, to wit: under the color of the statutes, ordinances, regulations, policies, customs and usages of the State of New York and the City of Buffalo.

34. The actions alleged above deprived Plaintiff of the following rights, without limitation thereto:

a) The right of Plaintiff not to be deprived of life, liberty or property without due process of law, and the right to the equal protection of the laws, all secured to him under the Fourth, Fifth and Fourteenth Amendments of the United States Constitution and Article I, section 6, of the New York Constitution.

b) The right of Plaintiff to be free from unreasonable search and/or seizure and/or the use of unreasonable force in making an arrest.

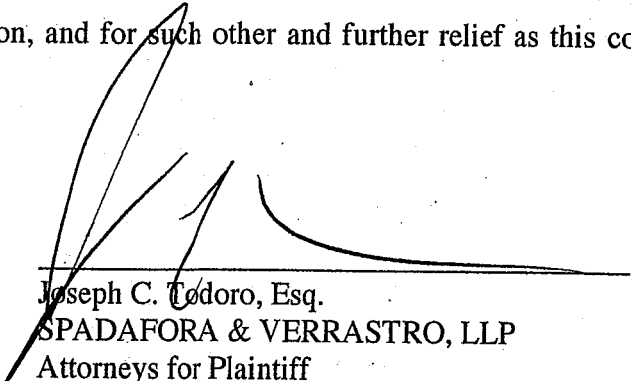
35. Defendants, individually and/or collectively, subjected Plaintiff to such deprivations by either negligent, reckless, malicious or wanton disregard of Plaintiff's rights.

36. By reason of the above, Plaintiff suffered and continues to suffer from said physical injuries, which are permanent in nature, has suffered great emotional trauma and harm and mental injury, has incurred legal expenses, has been deprived of his physical liberty, has incurred lost wages and impairment of his earning capacity, has incurred medical expenses, will incur future medical expenses, and has been deprived of his rights guaranteed under the United States Constitution, the New York Constitution, and the laws of the State of New York, and claims compensatory and/or punitive damages in a sum of money exceeding the jurisdictional limits of all lower courts.

WHEREFORE, Plaintiff demands Judgment against Defendants, CITY OF BUFFALO and/or CITY OF BUFFALO POLICE DEPARTMENT and/or Police Officers JOSEPH COOK, MICHAEL KEANE and/or SHARON ACKER, individually and/or collectively, as described in the causes of action herein, together with the costs and disbursements of this action.

WHEREFORE, Plaintiff demands Judgment against the Defendants, CITY OF BUFFALO and/or CITY OF BUFFALO POLICE DEPARTMENT and/or Police Officers JOSEPH COOK, MICHAEL KEANE and/or SHARON ACKER, individually and/or collectively, for any damages allowed by statute and/or caselaw, including exemplary and/or punitive damages, together with the costs and disbursements of this action, and for such other and further relief as this court may deem just and proper.

DATED: June 24, 2011.
Buffalo, New York



Joseph C. Todoro, Esq.
SPADAFORA & VERRASTRO, LLP
Attorneys for Plaintiff
Office and Post Office Address
2 Symphony Circle
Buffalo, New York 14201



CITY OF BUFFALO

DEPARTMENT OF LAW

EXHIBIT

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